

## **DOMESTIC RELATIONS COMMITTEE**

State Courts Building  
1501 W. Washington  
Conference Room 345 A/B  
Phoenix, AZ  
Minutes  
September 18, 2009

### **MEMBERS PRESENT:**

Honorable Linda Gray  
Theresa Barrett  
Laura Cabanillas  
Daniel Cartagena  
Honorable Sharon Douglas  
Todd Franks - *telephonic*  
Grace Hawkins  
Dannette Hendry  
David Horowitz  
Jeffery Hynes - *telephonic*

Honorable David Lujan  
Ella Maley  
Patti O'Berry  
George Salaz  
Donnalee Sarda  
Ellen Seaborne  
Russell Smolden  
David Weinstock  
Honorable Tom Wing  
Steve Wolfson  
Brian Yee

### **MEMBERS ABSENT:**

Honorable Andy Biggs  
Sidney Buckman  
William Fabricius

Honorable Leah Landrum Taylor  
Honorable Rebecca Rios  
Honorable Edward Ableser

### **GUESTS:**

Amy Love  
Kendra Diegan

Legislative Analyst, AOC  
Public

### **STAFF:**

Kathy Sekardi  
Tama Reily  
Amber O'Dell  
Stacy Weltsch

Administrative Office of the Courts  
Administrative Office of the Courts  
State Senate  
State House of Representatives

### **CALL TO ORDER**

With a quorum present, the September 18, 2009, meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair, at 10:03 a.m.

### **ANNOUNCEMENTS**

Senator Gray announced the appointment of new members, Laura Sabin Cabanillas, who will serve in the role of a faith-based organization representative, David Horowitz, as the domestic relations mediator, and Representative Edward Ableser.

#### **APPROVAL OF MINUTES**

The minutes of the January 7, 2009, and December 5, 2008 meetings of the DRC were presented for approval.

**MOTION:** To approve the minutes of the DRC January 7, 2009 meeting as presented.

**SECOND:** Motion seconded.

**VOTE:** Approved unanimously.

**MOTION:** To approve the minutes of the DRC December 5, 2008 meeting as presented.

**SECOND:** Motion seconded.

**VOTE:** Approved unanimously.

#### **2009 Legislative Session**

Amy Love, Legislative Analyst for the AOC, reported on legislation passed during the 2009 legislative session. The effective date for implementation is September 30, 2009.

##### **SB1010** *Family law rules; conforming statutes*

Replaces all references to *Arizona Rules of Civil Procedure*, with references to *Arizona Rules of Family Law Procedure*.

##### **SB1106** *Domestic violence; child custody*

Authorizes a court to forego consideration of which parent is more likely to allow the child continuing contact with the other parent, if the court determines that one parent is acting in good faith to protect that child from an act of domestic violence or child abuse. In addition, domestic violence was added to the list of relevant factors that the court must consider when making a custody determination, which essentially requires the court to make specific findings as to the allegations of domestic violence.

##### **SB1016** *Adoption; consent*

Requires the Department of Economic Security to consent to an adoption if given the consent of the child's parent or guardian, or if otherwise given authority to place the child for adoption by other legal proceedings. The court may waive the requirement for consent after determining that waiving the requirement is clearly in the child's best interest. A hearing on the waiver must be held and notice must be given to all interested parties.

**SB1088** *Domestic violence; dating relationships*

Expanded the definition of domestic violence to include current or previous romantic or sexual relationships between the victim and the defendant, and lists criteria that may be considered by the court to determine if a relationship is or was serious. The factors include the type and length of the relationship, the frequency of interaction, and the length of time since termination of the relationship.

**HB2207** *Behavior analysts*

**HB2206** *Psychologist examiners*

Made changes to various laws governing the Board of Psychologists Examiners, related to psychologists and behavior analysts. It prohibits the Board from considering complaints of unethical conduct against a psychologist or behavior analyst arising out of a court ordered evaluation or treatment unless the judge has found a substantial basis to refer the complaint to the board.

Dr. Brian Yee explained to the committee members the role of behavior analysts.

**SUBSTANTIVE LAW/COURT PROCEDURE WORKGROUP REPORT**

Steve Wolfson reported on the following issues the workgroup has been working on:

**HB2485** *Access to child; notification*

This bill did not pass in the last legislative session and the workgroup is recommending that it be included, in its current form, in the legislative package for the 2010 session. The workgroup is also considering seeking additional sponsors for the bill and would like assistance from the DRC in this endeavor.

**MOTION:** To approve and support HB2485 as presented.  
**SECOND:** Motion seconded.  
**VOTE:** 20-1-0.

**A.R.S. § 25-408** *Rights of noncustodial parent; parenting time; relocation of child; exception*

The workgroup continues to discuss the issues of the mileage provision in A.R.S. § 25-408, however, no specific language has been established in terms of distance. In the meantime, the workgroup proposes to strike the language in subsection b, line 8 “and both parents reside in the state” so that the statute remains applicable if one of the parents relocates. Also, to ensure this change will not conflict with the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), they are also proposing to add a subsection L, which reads, “This section shall apply for so long as the court retains exclusive, continuing child custody jurisdiction pursuant to § 25-1032.”

**Committee Comments/Concerns:**

- Are there exemptions for military or for instances where a parent has to relocate for a job?
  - Yes. Subsection F(1) addresses circumstances such as employment, health, or safety. Elsewhere in Title 25, military situations are addressed.

- What are the consequences in Arizona if a parent moves?
  - *It would depend on whether there was an agreement in place, but they are not permitted during a case to unilaterally move. Most parenting time plans have language that refers to reinforcing that obligation to seek permission of the court.*
- It seems like mileage restrictions would be onerous for parents in rural areas of the state, due to factors such as less available work, relocation could become a necessity.
  - *For reasons such as this, the workgroup has been discussing whether there should be a measure other than mileage.*

As one of the co-authors of the 100-mile rule, Ellen Seaborne shared some history on the origination of the rule. It was essentially a necessity at the time due to frequent occurrences of a parent taking a child out of state to “visit” the grandparents and never returning the children to Arizona. The new state would then gain jurisdiction. However, Ms. Seaborne suggested it may be time to consider other language that would be more flexible than a mileage determination. Ms. Seaborne suggested language that focused on how the court would look at the impact on the parenting time plan in relocation cases.

Judge Wing commented that language stating the parenting plan could be impacted is troublesome to him as a judge, because he sees litigants on a regular basis who insist they can work around such things. He added that if a method other than the mileage is going to be used, it must be definitive enough for the court to say when someone is in violation of the court order, and the benefit should go to the party who is injured by the fact that there was no notice provided to them.

David Horowitz stated that the statute is essentially a ‘notice provision’ and serves to shift the burden of proof between the parties as to who has to show whether or not it is in the child’s best interest and what the level of burden is, should the matter be litigated. If notice of relocation is not given, that will be considered by the court. If notice is provided, and the non-moving parent fails to respond to the notice, the burden on the moving parent is reduced. Ideally, the moving parent should give as much and as complete and as timely notice as possible because that always helps the situation in terms of whether the move will be allowed or not.

David Horowitz suggested that the characteristics of individual areas where people live should be considered, because traveling 100 miles in rural Arizona is very different from traveling 50 miles in the Phoenix metropolitan area. Mr. Horowitz stated the language may have to be more complicated to take into consideration the practical applications for the children involved.

Ms. Seaborne noted language in the statute that has caused problems and requested the committee members to look at page 2, line 19, stating that the move must improve the “general quality of life *for the custodial parent* or the child.” Ms. Seaborne stated this

language changes the standard and takes it out of the purview of what is in the best interest for the child.

**MOTION:** To strike from A.R.S. § 25-408(b), line 8, the language “and both parents reside in the state” and add new subsection (L) as presented.  
**SECOND:** Motion seconded.  
**VOTE:** 20-1-0.

#### HB2206 *Psychologist examiners board; omnibus*

David Weinstock informed the committee that efforts are being made to repeal the new language passed in HB2206. Mr. Weinstock requested the DRC may want to formally support the new legislation as it is written and oppose any efforts to repeal it.

Donnalee Sarda suggested the DRC discuss with the governor’s office the reasons the committee supports the bill. Senator Gray offered to speak to a representative from the governor’s office to discuss what their concerns are with HB2206.

#### **CREDIT ISSUES WORKGROUP REPORT**

Todd Franks updated the committee on the workgroup’s progress with SB1052, which addresses the issue of undisclosed debts, assets and/or obligations. The bill failed to progress in the last legislative session. Mr. Franks stated the workgroup has been working with DRC member Steve Wolfson, as a representative of the Family Law Section of the State Bar, and also participated in a stakeholder’s meeting with Rep. Adam Driggs. The workgroup would like to recommend submission of the bill at the next legislative session.

Judge Wing observed that the language in section D, subsection 1(a)(b)(c) addressing penalties, appears to be in conflict with the language in section T. Mr. Franks suggested amending the language in subsection T, to be in line with the language in section D, subsection 1(a)(b)(c)

**MOTION:** To strike the word “including” in A.R.S. § 25-318, section T, and add “which may include.”  
**SECOND:** Motion seconded  
**VOTE:** Unanimous

**MOTION:** To recommend submission and passage of SB1052 as amended today.  
**SECOND:** Motion seconded. Motion withdrawn.

Steve Wolfson informed the committee that he provided the State Bar Family Law Executive Council with the current version of SB1052 following the workgroup’s last

meeting, and he will attend a meeting of the Council on September 26, 2009. SB1052 is on the agenda to address at that meeting. For this reason, Mr. Wolfson suggested this item be tabled until after the Council's meeting so that any additional recommended language changes can be addressed. In light of this information Mr. Franks requested permission to withdraw his motion to submit SB1052 to the legislature at this time.

**CUSTODY STATUTE WORKGROUP**

Presenter was not in attendance.

**SCHEDULE NEXT DRC MEETING**

October 23, 2009 was chosen for the next DRC meeting.

**NEXT MEETING AGENDA ITEMS**

The following items are to be on the next meeting agenda:

- No Fault Divorce
- Teen Dating – Senator Gray will give a presentation on a program tailored for teen dating
- IFC Review
- Report on A.R.S. § 25-408
- Discussion with Governor's office regarding HB2206

**ADJOURN/CALL TO THE PUBLIC**

No public comments offered.

Meeting adjourned at 11:14 a.m.

**NEXT MEETING:**

Friday, October 23, 2009  
Arizona State Courts Building  
Conference Room 119 A/B  
10:00 a.m. – 12:00 p.m.